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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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USA,
Plaintiff,
v.
KELLEY,
Defendant.

Case No. [15-cr-00444-CRB-2](#)

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**ORDER DENYING MOTION FOR
COMPASSIONATE RELEASE**

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13 Defendant Kevin Kelley moves for a reduced sentence under 18 U.S.C.
14 § 3582(c)(1)(A)(i). The Court concludes that Kelley has not presented extraordinary and
15 compelling reasons that warrant such a reduction, and thus denies Kelley's motion.

16 **I. BACKGROUND**

17 On January 4, 2017, the Court sentenced Kelley to 87 months imprisonment after
18 Kelley pleaded guilty to conspiracy to distribute cocaine in violation of 21 U.S.C. § 846
19 and distribution of methamphetamine in violation of 21 U.S.C. §§ 841(a)(1),
20 (b)(1)(A)(viii). See Judgment (dkt. 135). On May 16, 2020, Kelley moved for a reduced
21 sentence under 18 U.S.C. § 3582(c)(1)(A)(i). See First Mot. (dkt. 141). The Court denied
22 his motion because although Kelley had been infected with COVID-19, Kelley identified
23 no underlying medical conditions that increased his risk of serious illness from COVID-19.
24 See Order Denying First Mot. (dkt. 146) at 3.

25 On February 24, 2021, Kelley moved for reconsideration based on new arguments
26 and evidence. See Second Mot. (dkt. 148). Specifically, Kelley argued that (1) Kelley had
27 been diagnosed with underlying medical conditions that increase his risk of serious illness
28 if he is reinfected with COVID-19, and (2) Kelley has continued to suffer from "long haul

1 symptoms” relating to his previous infection. Id. at 2. According to medical records filed
2 under seal, Kelley has been diagnosed with hypertension, for which he is receiving
3 hydrochlorothiazide medication.

4 The Court stayed Kelley’s motion so that he could present these arguments to the
5 Bureau of Prisons, consistent with § 3582(c)’s exhaustion requirement. See Order Staying
6 Second Mot. (dkt. 149). Kelley has now done so. See Letter to Warden (dkt. 152-1); Opp.
7 (dkt. 153) at 1. But because the parties disputed whether Kelley had initially requested a
8 COVID-19 vaccine, and then agreed that Kelley wished to be vaccinated, the Court stayed
9 his motion again. See Stay Order (dkt. 158); Order re Status Reports (dkt. 162). The
10 parties have now confirmed that on June 2, 2021, Kelley received the first dose of the
11 Pfizer-BioNTech COVID-19 vaccine. Kelley is scheduled to receive the second dose on
12 June 23, 2021.

13 **II. LEGAL STANDARD**

14 The Sentencing Reform Act of 1984, 18 U.S.C. § 3551 et seq., does not generally
15 permit federal courts to “modify a term of imprisonment once it has been imposed.”
16 Dillon v. United States, 560 U.S. 817, 819 (2010) (quoting 18 U.S.C. § 3582(c)).
17 Congress has provided certain exceptions to that rule. As relevant here, a court may
18 reduce a defendant’s sentence under 18 U.S.C. § 3582(c)(1)(A)(i) if certain procedural
19 requirements are met and if “extraordinary and compelling reasons warrant such a
20 reduction.”

21 Before the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194, a defendant
22 could not bring a motion for compassionate release under § 3582(c). Under the original
23 compassionate release framework, enacted as part of the Comprehensive Crime Control
24 Act of 1984, only the Director of the Bureau of Prisons could move for compassionate
25 release on a defendant’s behalf. See 18 U.S.C. § 3582(c)(1)(A) (2017).

26 But effective December 2018, the First Step Act permits a defendant to move for
27 relief under § 3582(c)(1)(A) if the defendant satisfies the statute’s exhaustion
28 requirements. See First Step Act § 603(b)(1). The defendant may bring a motion only

1 once he has “fully exhausted all administrative rights to appeal a failure of the Bureau of
2 Prisons” to bring the motion on his behalf, or after “the lapse of 30 days from the receipt of
3 such a request by the warden of the defendant’s facility, whichever is earlier.” 18 U.S.C.
4 § 3582(c)(1)(A).

5 The First Step Act did not alter the original framework’s requirements that a court
6 consider the factors set forth in 18 U.S.C. § 3553(a) before granting a motion for a reduced
7 sentence, see 18 U.S.C. § 3582(c)(1)(A), and that any sentence reduction under § 3582(c)
8 must be “consistent with applicable policy statements issued by the Sentencing
9 Commission,” 18 U.S.C. § 3582(c)(1)(A).

10 Before the First Step Act enabled defendants to bring their own motions for
11 compassionate release under § 3582(c)(1)(A), the Sentencing Commission promulgated a
12 policy statement enumerating circumstances constituting “extraordinary and compelling
13 reasons” to reduce a sentence, U.S.S.G. § 1B1.13 cmt n.1, and directing that a court may
14 reduce a sentence under § 3582(c)(1)(A) only if the court finds that “[t]he defendant is not
15 a danger to the safety of any other person or to the community, as provided in 18 U.S.C.
16 § 3142(g),” U.S.S.G. § 1B1.13(2).

17 The policy statement refers to motions brought by the Director of the Bureau of
18 Prisons, and not to motions brought by defendants, as defendants could not bring such
19 motions when the policy statement was last amended. See U.S.S.G. § 1B1.13. Because
20 the policy statement does not refer to motions brought by defendants, it is not binding on
21 district courts considering such motions. See United States v. Aruda, 993 F.3d 797 (9th
22 Cir. 2021).

23 In exercising its discretion, the Court nonetheless refers to the policy statement as
24 helpful guidance. The Court presently agrees with the policy statement’s definition of
25 “extraordinary and compelling reasons” and the policy statement’s guidance that people
26 who present a danger to the community should not be granted compassionate release.

27 First, the Sentencing Commission’s enumerated circumstances constituting
28 “extraordinary and compelling reasons” to reduce a sentence all relate to a defendant’s

1 individual characteristics or conditions—that is, some combination of the defendant’s
2 health, age, and family situation. See U.S.S.G. § 1B1.13 cmt n.1. For example, if the
3 defendant suffers from “a terminal illness (i.e., a serious and advanced illness with an end
4 of life trajectory)” or “a serious physical or mental condition, . . . serious functional or
5 cognitive impairment, or . . . deteriorating physical or mental health because of the aging
6 process . . . that substantially diminishes the ability of the defendant to provide self-care
7 within the environment of a correctional facility and from which he or she is not expected
8 to recover,” the “extraordinary and compelling reasons” standard is satisfied. See U.S.S.G.
9 § 1B1.13 cmt. n.1(A)(i)(i)–(ii). The standard is also satisfied if “[t]he defendant (i) is at
10 least 65 years old; (ii) is experiencing a serious deterioration in physical or mental health
11 because of the aging process; and (iii) has served at least 10 years or 75% of his or her
12 term of imprisonment, whichever is less,” U.S.S.G. § 1B1.13 cmt. n.1(B), or in certain
13 circumstances requiring the defendant to care for minor children or a spouse or registered
14 partner, id. § 1B1.13 cmt. n.1(C). Finally, the standard is satisfied if, “[a]s determined by
15 the Director of the Bureau of Prisons, there exists in the defendant’s case an extraordinary
16 or compelling reason other than, or in combination with,” the above-described
17 circumstances. U.S.S.G. § 1B1.13 cmt. n.1(D).

18 The Sentencing Commission’s enumerated circumstances constituting
19 “extraordinary and compelling reasons” to reduce a sentence are sensible. Although a
20 future motion could conceivably persuade the Court that these circumstances fail to
21 capture the full range of “extraordinary and compelling reasons” to reduce a sentence
22 under § 3582(c)(1)(A), the Court is yet to encounter such a motion.

23 Second, as discussed above, the Sentencing Commission has directed that a court
24 may reduce a sentence under § 3582(c)(1)(A) only if the court finds that “[t]he defendant
25 is not a danger to the safety of any other person or to the community, as provided in 18
26 U.S.C. § 3142(g).” U.S.S.G. § 1B1.13(2). Section 3142(g), in turn, requires courts to
27 “take into account” four factors when determining the defendant’s dangerousness: (1) “the
28 nature and circumstances of the offense charged,” (2) “the weight of the evidence against

1 the person,” (3) “the history and characteristics of the person,” and (4) “the nature and
2 seriousness of the danger to any person or the community that would be posed by the
3 person’s release.” 18 U.S.C. § 3142(g).

4 This framework is also sensible. Indeed, the Court would not exercise its discretion
5 under § 3582(c)(1)(A) to grant relief to a defendant that the Court determines is a danger to
6 the community. Thus, the Court sees no reason to deviate from the policy statement’s
7 dangerousness requirement, which ensures that the Court carefully weighs the public’s
8 interest in safety before reducing a defendant’s sentence.

9 **III. DISCUSSION**

10 The Court denies Kelley’s motion for a reduced sentence because Kelley has not
11 shown that “extraordinary and compelling reasons warrant such a reduction.” 18 U.S.C.
12 § 3582(c)(1)(A)(i).

13 Like the government, see Opp. at 6, the Court assumes that Kelley’s hypertension
14 could pose a heightened risk of severe illness from COVID-19 in the absence of other
15 information. But here, that other information defeats Kelley’s attempt to show
16 extraordinary and compelling circumstances. During Kelley’s first infection, he did not
17 suffer severe illness. And more importantly, Kelley has now received the first dose of the
18 COVID-19 vaccine. Both of these factors make it highly unlikely that Kelley will suffer a
19 reinfection that makes him seriously ill. Although Kelley has apparently suffered from
20 long-term symptoms relating to his initial infection, that is not an extraordinary and
21 compelling reason to grant his motion. There is no indication that the long-haul symptoms
22 evince Kelley’s diminished ability to provide self-care in a prison setting. Indeed, Kelley
23 has not explained why his release from prison would have any effect on those symptoms.

24 Because Kelley has not shown that extraordinary and compelling reasons warrant
25 reducing his sentence, the Court need not consider whether Kelley is a danger to the
26 community.

27 **IV. CONCLUSION**

28 For the foregoing reasons, the Court denies Kelley’s motion for compassionate

1 release.

2 **IT IS SO ORDERED.**

3 Dated: June 7, 2021



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CHARLES R. BREYER
United States District Judge